HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.565 of 2004

Between:

P.Gyaneshwar Goud and others … Appellants

And

The State of Andhra Pradesh,
represented by its Principal Secretary
to Government, Revenue Department,
Hyderabad and others. … Respondents

:: J U D G M E N T ::

Counsel for the appellants : Sri B. Vijayasen Reddy

Counsel for respondent Nos.1 to 6 : Government Pleader for Revenue

Counsel for respondent No.9 : Sri O. Manohar Reddy

5th March, 2007

Per G.S. Singhvi, C.J.

Feeling aggrieved by the direction given by the learned Single Judge in favour of respondent No.9 - Smt. Indira Mohan Reddy in Writ Petition No.21739 of 2002, the appellants have preferred this appeal.

Late Sri P. Nandaiah, predecessor of the appellants owned land comprised in Survey Nos.13/2, 15 and 67 of Teegalaguda Village, Saidabad Mandal, Hyderabad District. On the enforcement of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, 'the Act'), Shri P. Nandaiah filed declaration under Section 6. The same was processed by the Special Officer and Competent Authority (Urban Land Ceiling), Hyderabad (respondent No.3), who opined that the land owner was having surplus land to the extent of 9220 sq. mtrs. The declarant submitted an objection petition on 26-6-1980 stating therein that the land is covered by an agreement of sale executed in favour of M/s. Friends Co-operative Housing Society Ltd. and, therefore, the same is liable to be exempted under Section 20 of the Act. After considering the objections, respondent No.3 passed order dated 26-8-1980 under Section 8 (4) of the Act whereby he declared that the land owner had surplus land measuring 9220 sq. mtrs. This was followed by notifications and orders issued under various clauses of Section 10 of the Act.

The appellants challenged the aforementioned order and the consequential proceedings issued under Section 10 of the Act by filing an appeal under Section 33 of the Act, which was dismissed by the Commissioner (Appeals), Andhra Pradesh (respondent No.2) vide his order dated 18-9-2000. The appellants then filed Writ Petition No.20249 of 2002 and prayed for quashing order dated 18-9-2000.

In the meanwhile, the government issued G.O.Ms.No.506, Revenue (UC-I) Department, dated 26-8-2002 for allotment of 250 square yards of land in Survey No.67 to respondent No.9 as a rehabilitation measure because her husband had been killed by the extremists. Subsequently, G.O.Ms.No.585, Revenue (UC-I)

Department, dated 24-9-2002 was issued for correcting mistake in the description of the village in G.O.Ms.No.506, dated 26-8-2002. The allotment of land made in favour of respondent No.9 was challenged by the appellants in Writ Petition No.21739 of 2002.

By a common order dated 22-1-2004, the learned Single Judge disposed of both the petitions. He allowed Writ Petition No.20294 of 2002 and quashed order dated 18-9-2000 passed by respondent No.2 along with the orders, which were subject matter of appeal preferred by the appellants under Section 33 of the Act. The relevant portion of the order of the learned Single Judge read as under:

> "Under these circumstances, W.P.No.20294/2002 is allowed. Consequently, the order of the Commissioner of Appeals dated
> 18-9-2000 as well as the orders challenged therein are set aside. The matter shall stand remanded to the Special Officer and Competent Authority, Urban Land Ceilings, Hyderabad, for fresh consideration and disposal, after issuing notices to the petitioners. The Special Officer shall dispose of the matter within a period of 3 months from the date of receipt of this order. No costs."

The second writ petition was disposed of by the learned Single Judge in the following terms:

> "The subject matter of W.P.No.21739 of 2002 is assignment of 250 sq.yards of land in Sy.No.67 in favour of the 7th respondent Smt. Indira Mohan Reddy. When compared to the vast extent of land covered by the declaration submitted by the original declarant, the land assigned in favour of the 7th respondent is too meagre. This Court finds that even if the petitioners are allotted one standard holding each, there is every likelihood of there remaining certain area in excess of ceiling limits. The matter is already remanded to the Special Officer for fresh consideration and disposal. If ultimately it emerges that the petitioners held any land in excess of ceiling limit, the necessity to adjudicate upon the orders challenged in this writ petition does not arise. However, if it emerges that the petitioners do not hold any land in excess of ceiling limits, it shall be open to them to seek compensation from the

Government for the land that was assigned in favour of the 7th respondent. This writ petition is accordingly disposed of."

The appellants are aggrieved by the order of the learned Single Judge insofar as it relates to Writ Petition No.21739 of 2002. They have pleaded that in view of the order passed in Writ Petition No.20294 of 2002, the learned Single Judge could not have maintained the allotment made in favour of respondent No.9.

Sri B. Vijaysen Reddy, learned counsel for the appellants argued that in the face of finding of invalidity recorded by him qua orders passed under Sections 8(4) and 10 of the Act, the learned Single Judge did not have the jurisdiction to sustain the allotment made in favour of respondent No.9. Learned counsel submitted that if, as a result of re-determination of the surplus area case of the land owner, respondent No.3 finds that the appellants are entitled to separate shares, then they will be entitled to opt for retaining particular piece of land including the one allotted to respondent No.9 and this right of theirs could not have been curtailed by the learned Single Judge by declaring that they shall be entitled to seek compensation from the government in lieu of the land allotted to respondent No.9.

Learned Government Pleader and Sri O. Manohar Reddy argued that the learned Single Judge committed an error by remanding the case for re-determination of the surplus area case of late Sri P. Nandaiah because the latter had already sold the land to M/s. Friends Co-operative Housing Society Ltd. Sri O. Manohar Reddy further argued that the learned Single Judge did not commit any error by protecting the possession of respondent No.9 because the land was allotted to her in accordance with the policy of the government to provide succour to the family of those killed by the terrorists.

We have considered the respective submissions. In the context of the argument of the learned Government Pleader and Shri O. Manohar Reddy that the learned Single Judge should not have remanded the case to respondent No.3 for fresh adjudication of the

surplus area case of late Sri P. Nandaiah because he had already sold the land to M/s. Friends Co-operative Housing Society Ltd., we enquired from them whether their respective clients have challenged the order passed by the learned Single Judge in Writ Petition No.20294 of 2002. To this, both the learned counsel replied in negative. Therefore, the direction given by the learned Single Judge in Writ Petition No.20294 of 2002 has become final and it is not open to the State Government and its functionaries as also respondent No.9, who have been arrayed as parties in the appeal preferred by the appellants against the order passed in Writ Petition No.21739 of 2002, to indirectly question the legality of that order.

We may now deal with the issue raised in this appeal. Admittedly, the order passed under Section 8(4) of the Act and the consequential action taken under Section 10 have been nullified by the learned Single Judge in Writ Petition No.20294 of 2002. Therefore, all actions taken by the respondents during the pendency of the proceedings under the Act including allotment of land to respondent No.9 will be deemed to have become nullity and it was not open to the learned Single Judge to issue direction which has the effect of protecting the said allotment. It is true that the extent of land allotted to respondent No.9 is very small and there was good and tangible reason for allotment of land to her, but the Court cannot sustain the allotment ignoring the right, which may be available to the appellants as a result of re-determination of the surplus area case of late Sri P. Nandaiah.

For the reasons mentioned above, the appeal is allowed. Respondent No.3 shall, if he has already not decided the matter pursuant to the direction given by the learned Single Judge in Writ Petition No.20294 of 2002, pass appropriate order within a maximum period of one month from today. If respondent No.3 comes to the conclusion that the writ petitioners are not entitled to a share in the land because the same stood transferred to M/s. Friends Cooperative

Housing Society Limited on 23-11-1974, the allotment made in favour of respondent No.9 shall remain undisturbed. If, on the other hand, respondent No.3 comes to the conclusion that the writ petitioners are entitled to a share in the land of the declarant late Sri P. Nandaiah, then they shall be given choice to select the land and in the event of their selecting the land allotted to respondent No.9, the latter shall be allotted another piece of land measuring 250 square yards.

G.S. SINGHVI, C.J.

5th March, 2007.

C.V. NAGARJUNA REDDY, J.

ARS